

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

(Woodland, California)

ZIEMAN MANUFACTURING COMPANY

Employer

and

SHEET METAL WORKERS INTERNATIONAL
ASSOCIATION LOCAL 162

Petitioner

20-RC-17988**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 1/
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer. 2
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act. 3/
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 4/

All full-time and regular part-time leadmen, quality control inspectors, welders, painters, forklift operators, janitors, production workers and truck drivers employed by the Employer at its facilities in Woodland, California; excluding office clericals, guards and supervisors as defined in the the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have

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been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by SHEET METAL WORKERS INTERNATIONAL ASSOCIATION LOCAL 162.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB. Wyman-Gordan Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that with 7 days of the date of this Decision 3 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the Regional Office, 901 Market Street, Suite 400, San Francisco, California 94103, on or before November 4, 2004. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, 1099-14th Street, NW, Washington, DC 20570-0001**. This request must be received by the Board in Washington by November 11, 2004.

Dated October 28, 2004.

at San Francisco, California

/s/ Robert H. Miller

Regional Director, Region 20

- 1/ The parties stipulated, and I find, that the Employer is a California corporation with an office and place of business in Woodland, California, where it is engaged in the manufacture of housing chassis, recreational vehicle trailers and boat trailers. The parties further stipulated, and I find, that during the calendar year ending December 31, 2003, the Employer sold and shipped goods valued in excess of \$50,000 directly to points outside the State of California. Based on such facts, I find that the Employer is engaged in commerce and that it will effectuate the purposes of the Act to assert jurisdiction in this matter.
- 2/ The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act.
- 3/ The parties stipulated, and I find, that there is no contract bar to preclude the processing of this petition.
- 4/ The Petitioner seeks to represent a unit comprised of leadmen, quality control inspectors, welders, painters, forklift operators, janitors, production workers and truck drivers employed by the Employer at its facilities at 1805 East Beamer Street and 225 Industrial Way, Woodland, California; excluding office clericals, guards and supervisors within the meaning of the Act. The Employer contends that leadmen should be excluded from the unit on the basis that they are statutory supervisors and that the quality control inspectors should be excluded from the unit because they do not share a community of interest with the petitioned-for employees. There are approximately 25 employees in the petitioned-for unit including the three leadmen and two quality control inspectors whose unit placement is at issue.

The Employer's Operation. The Employer's Vice President of Operations, John Pollara, was the only witness to testify at the hearing. Pollara has worked for the Employer for 34 years. His office is located in Whittier, California, which I administratively note is over 400 miles from Woodland where the facilities in this case are located. Pollara testified that he travels away from his office about twice a month, and the most recent time he visited the Woodland facilities was about six months before the hearing. On that occasion, he spent about an hour on the plant floor.

The Employer has been in operation in Woodland since approximately 1970. About five months before the hearing, the Employer was purchased by Lippert Components and it is a wholly-owned subsidiary of Lippert. The two facilities involved in this case are located in Woodland and are about two miles apart. At its East Beamer Street facility, the Employer manufactures boat trailers and flatbed trailers (i.e., watercraft trailers for Seadoos and Jet Skis). Approximately twenty employees work at the East Beamer Street

facility, including two painters, one or two truck drivers, three or four production employees, an unidentified number of welders, a quality control inspector and a leadman. The Employer's administrative office is also located at the East Beamer Street facility. The Industrial Way plant is a smaller facility that services customers in the manufactured housing industry. There are six to eight employees at this facility, including four welders and one painter, a foreman and a leadman.

The highest level onsite manager for the Woodland facilities is the division manager. Reporting to the division manager are the foremen at each facility, and reporting to the foremen are the leadmen. Under the leadmen are the welders, painters, forklift operators and truck drivers at each facility.

The Leadmen. The Employer has two leadmen at the East Beamer Street facility and one leadman at the Industrial Way facility. According to Pollara, leadmen are responsible for different areas of the plant, such as the mobile home jig, welding, paint and final assembly areas. Pollara identified the leadmen at the East Beamer Street facility as Gilberto Castro, who is classified for payroll purposes as a senior spray painter, and Paul Gonzales, who is classified as a senior welder. At the Industrial Way facility, there is one leadman, whom Pollara identified as Jamie Cox. Cox is classified as a welder. Pollara also identified Pedro Bidellas, who works at the Industrial Way facility, as a leadman but at the same time he testified that he was unsure about Bidellas being a leadman. According to Pollara, the Employer has no separate classification of leadman; rather, it classifies the leadmen in the classifications that they work in and pays them a 50 cents per hour premium above the wage rate of the highest paid employee in their classification. Leadmen receive the same fringe benefits as all other employees at the Employer's Woodland facilities.

The record contains a job description for the position of leadman, which states, in relevant part, that:

The leadman is responsible for actions of a small group of people under his control. Must make sure that products are made to specification and within time allowed. Works with the foreman to ensure work rules are followed. This job requires an ability to work with others and as a result has some degree of stress. Employee must cope with change and multiple demands on their time.

Note: All leadmen have an underlying job classification. If their classification limits the number of individuals in the classification, the leadman counts toward that limit.

Leadmen work alongside the employees in their respective work areas, performing the same manual work as that of other employees, but they are the designated leader of their group. Pollara testified that the Employer's foremen direct the work of the employees in the plant through the leadmen. In this regard, Pollara testified that the foremen inform the leadmen on a daily basis what work needs to be completed and the order in which it is to be done, and the leadmen are "responsible for turning and transferring this information back down to the other employees." Pollara testified that he considers the leadmen to be a "kind of frontline management position ". . . because they're the conduit, they're who everything goes through."

Pollara further testified that the leadmen are responsible for overseeing the employees under them and ensuring that employees are working efficiently. They are also responsible for having the tools and supplies needed for a job. The leadmen discuss employee performance with the foremen. Pollara testified generally that the leadmen report if an employee is not doing his job properly and recommend if an employee should be reprimanded or terminated. According to Pollara, if a leadman sees an employee doing something wrong and it is a minor infraction, the leadman would try to counsel the employee and show him how to do the job correctly. If a major infraction is involved, then the leadmen go directly to the foremen and report what is going on and make recommendations. According to Pollara, the leadmen do not directly hire or fire, but are "instrumental in making recommendations in that regard." Pollara testified that he believed that in the majority of cases, the recommendations of the leadmen were followed "unless there's some extenuating circumstances." However, he was unable to give any example of a specific situation where a leadman had taken an action that had had some effect on the continued employment of another worker.

The foremen prepare written employee evaluations, but Pollara testified that he believed the foreman got ". . . a lot of feedback from the leadman in terms of . . . is this person doing their job, are they showing up every day or, . . . is their quality good." However, in this regard, Pollara further testified that the Employer has an automatic wage progression and promotion system, and that no one affects the rate of pay received by employees. The record discloses no instance where a leadman was involved in effectively recommending a promotion for another employee.

Pollara further testified that the leadmen can also recommend that job applicants be hired, and "[i]n most cases, their recommendations are followed. . ." However, Pollara was unable to testify regarding any specific examples or to provide any documentation to support his testimony in this regard.

Pollara testified that when the foremen are absent, the leadmen take on even more responsibility. However, he was uncertain as to how often the foremen are absent. In such situations, according to Pollara, "unless it was an absolute emergency . . . [the

leadmen] wouldn't probably fire an employee . . . they'd probably wait until the foreman came back the next day and talk to them about what their recommendations would be." The record contains no further evidence as to specific instances where a leadman substituted for a foreman. Although Pollara testified that the leadmen also make recommendations to the foremen about the assignment of overtime, the record contains no specific example of an instance where this had occurred.

The scheduling of vacations and time off is generally handled by the scheduler at the plant, who gives the schedule to the foreman, who, in turn, gives it to the leadmen to distribute to employees. The scheduler for the Woodland facilities is Wallace Shiflet. The Employer considers the scheduler part of the office staff and no party seeks his inclusion in the unit. Pollara testified that if an employee asks for time off, the leadman would probably relay the request to the foreman or the division manager.

As indicated above, the leadmen are paid a 50 cent premium above the highest paid employee in their classification and they receive the same fringe benefits as all other employees.

Quality Control Inspectors. The Employer employs one quality control inspector at each of its Woodland facilities. They are identified as David Boise and David Russell and they are each identified on the Employer's payroll record as "inspector, QC,"

The record contains a job description for the position of inspector, final Q.C., which states that there is a maximum of one such employee per each division. It further states:

Assures that products are to written quality standards. Must read prints and welding symbols. Must be able to use tools required for assuring tolerances, from tape measures, micrometers and paint gauges to torque wrenches. This job will have multiple demands on employee's time.

Pollara testified that the quality control inspectors check the product during the various stages of production to ensure a quality product. Specifically, they ensure that the painting and welding work have been done properly. If they find an error in the production of a unit, they can hold up production in order to find out what caused the error, and they tag the unit and ensure that it is repaired. According to Pollara, the only other persons who can stop production are the division manager, the foreman and the leadmen. However, Pollara had never seen the production line stopped at either of the Woodland facilities. The record contains no written documentation regarding situations in which a production line was stopped and Pollara was unable to

testify regarding any specific instance in which a leadman or a quality control inspector had stopped a production line.

Quality control inspectors report directly to the division manager. If the division manager is unavailable, they report to the foremen. Pollara described the role of the quality control inspector as an “adversarial” one, because employees do not like to be told that they made a mistake and the quality control inspector can “get the other person in trouble if the person continues to make mistakes” because the quality control inspector is “reporting back to the division manager that this person’s making mistakes.” Pollara testified that the quality control inspectors are not directly involved in disciplining employees but “. . . they can affect the employee if they constantly find problems with their work.” However, Pollara was unable to identify any situation where a quality control inspector actually influenced the discipline or the termination of an employee.

Pollara was unaware of the type of paperwork filled out by the quality control inspectors at the Woodland plants and the record contains no documentary evidence in this regard. According to Pollara, while the quality control inspectors work alongside the production employees, under normal conditions the quality control inspectors do not perform regular production work.

The quality control inspectors do not receive premium pay as do the leadmen. Rather, they are paid at the higher end of the pay scale at an initial rate of \$12.76. Only the truck driver classification and the leadmen are paid at a higher rate of pay. The quality control inspectors receive the same fringe benefits as the other employees in the petitioned-for unit.

Whether the Leadmen Are Statutory Supervisors. As indicated above, the Employer contends that the leadmen should be excluded from the unit as statutory supervisors.

Section 2(11) of the Act defines a supervisor as:

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Section 2(11) is interpreted in the disjunctive and the possession of any one of the authorities listed places the employee invested with this authority in the

supervisory class. See *Providence Hospital*, 320 NLRB 717 (1996) end's 121 F.3d 548 (9th Cir. 1997).

To support a finding of supervisory status, an employee must possess at least one of the indicia of supervisory authority set out in Section 2(11) of the Act. *International Center for Integrative Studies*, 297 NLRB 601 (1990); *Juniper Industries, Inc.*, 311 NLRB 109, 110 (1993). Further, the authority must be exercised with independent judgment on behalf of the employer and not in a routine, clerical or perfunctory manner. *Clark Machine Corp.*, 308 NLRB 555 (1992); *Bowen of Houston, Inc.*, 280 NLRB 1222, 1223 (1986). An individual who exercises some "supervisory authority" only in a routine, clerical, perfunctory, or sporadic manner will not be found to be a supervisor. *Id.* Further, in determining whether an individual is a supervisor, the Board has a duty to employees not to construe supervisory status too broadly because the employee who is found to be a supervisor is denied the employee rights that are protected under the Act. *Hydro Conduit Corp.*, 254 NLRB 433, 347 (1981). Secondary indicia alone, such as job titles, differences in pay and attendance at meetings, are insufficient to establish that an employee is a statutory supervisor. *Laborers Local 341 v. NLRB*, supra; *Arizona Public Service Co. v. NLRB*, 453 F.2d 228, 231 fn. 6 (9th Cir. 1971); *Waterbed World*, 286 NLRB 425, 426 (1987).

Whether an individual is a supervisor is to be determined in light of the individual's actual authority, responsibility, and relationship to management. See *Phillips v. Kennedy*, 542 F.2d 52, 55 (8th Cir. 1976). Thus, the Act requires "evidence of actual supervisory authority visibly demonstrated by tangible examples to establish the existence of such authority." *Oil Workers v. NLRB*, 445 F.2d 237, 243 (D.C. Cir. 1971). It is well established that mere conclusory statements, without such supporting evidence, are not sufficient to establish supervisory authority. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991). Although a supervisor may have "potential powers . . . theoretical or paper power will not suffice. Tables of organization and job descriptions to do not vest powers." *Oil Workers v. NLRB*, 445 F.2d at 243. In addition, the evidence must show that the alleged supervisor knew of his or her authority to exercise such power. *NLRB v. Tio Pepe, Inc.*, 629 F.2d 964, 969 (4th Cir. 1980).

Finally, the burden of proving supervisory status is on the party who asserts that it exists. *Quadrex Environmental Co.*, 308 NLRB 101 (1992); *California Beverage Co.*, 283 NLRB 328 (1987); *Tucson Gas & Electric Company*, 241 NLRB 181 (1979).

In the instant case, the record evidence does not establish that the leadmen are statutory supervisors. Vice President Pollara had no recent first-hand knowledge of the work of the leadmen at the Woodland facilities. He had only visited the plants once in the past six months and spent only an hour at that

time on the floor of the plants. Nor does the record include any documentary evidence to establish that the leadmen possess supervisory authority. Thus, the job description for the leadmen does not suggest any authority beyond that of the typical leadman or straw boss, who is not considered a statutory supervisor under Board law. Indeed, the Employer does not even classify these individuals as leadmen in its payroll, but instead classifies them as welders or painters.

The record reflects that the leadmen do not hire, discipline, terminate, promote or schedule employees. They spend most of their time working next to other employees in the petitioned-for unit and performing the same types of work as unit employees. If employees need time off, the leadmen go to the foreman for direction. In this regard, the record reflects that the foreman sets the priorities for work and the leadmen act as a conduit to pass along the decisions made by the foreman to employees. The fact that the leadmen report to the foreman about the quality or quantity of work of the employees is not sufficient to establish that the leadmen are supervisors under the Act. The conclusory testimony by Pollara, that the leadmen make recommendations for discipline that are followed by the foremen, is not supported by any concrete examples to establish the existence of such authority. Finally, the 50 cents an hour premium pay that the leadmen receive does not establish their supervisory status.

In view of the foregoing, I find that the record evidence does not establish that the leadmen are supervisors within the meaning of the Act. Accordingly, they will be included in the unit.

Whether the Quality Control Inspectors Share A Community of Interest with Unit Employees. As indicated above, the Employer seeks to exclude the quality control inspectors from the unit, asserting that they lack a community of interest with other unit employees. The Petitioner takes the opposite view.

In defining bargaining units, the Board focuses on whether employees share a community of interest. *NLRB v. Action Automotive, Inc.*, 469 U.S. 490, 494 (1985). Relevant factors include: (1) similarity in skills, interests, duties, and working conditions; (2) functional integration of the plant, including interchange and contact among the employees; (3) the employer's organizational and supervisory structure; (4) the bargaining history; and, (5) the extent of union organization among the employees. See, e.g., *Mitchellace, Inc. v. NLRB*, 90 F.3d 1150, 1157 (6th Cir.1996) quoting; *Bry-Fern Care Center, Inc. v. NLRB*, 21 F.3d 706, 709 (6th Cir.1994).

Application of these factors to the quality control inspectors at issue in the instant case shows that with regard to the first factor, similarity in skills, interests, duties, and working conditions, the record shows that the quality

control inspectors have the same skills as other production workers. While familiarity with the tools of the trade and machinery is mandated, there is no evidence that any specialized education or training is required. The quality control inspectors work alongside other workers. Although the Employer contends that the role of the quality control inspectors *vis a vis* their co-workers is an adversarial one, such an adversarial role is not sufficient to make the quality control inspectors statutory supervisors. See *NLRB v. Lundy Packing Co.*, 68 F.3d 1577, 1582 (4th Cir. 1995) and cases cited therein.

With regard to the factor of functional integration, the record shows that the work of the quality control inspectors is critical to the Employer's production process. Further, the record shows regular contact between the quality control inspectors and other production workers

Third, the employer's organizational and supervisory structure further supports a conclusion that a community of interest exists between the quality control inspectors and the other employees in the unit. All employees at the facilities are ultimately supervised by the division manager, even though the quality control inspectors report to him directly and other employees may report to him indirectly through their foremen. Also, the quality control inspectors are hourly employees, just like other production workers, and they receive the same fringe benefits. Finally, no party contends, and the record does not support, that quality control inspectors are statutory supervisors or that they act as supervisors in the absence of the foremen or division manager.

The fourth factor in the community of interest analysis, bargaining history, does not apply under the facts of this case as there is no evidence that the Employer was previously unionized.

Finally, with regard to the factor of the extent of union organization among the employees, the record evidence shows that the Petitioner seeks to include the quality control inspectors in the unit and that no labor organization seeks to include them in a different unit. As noted above, while this factor is not controlling in making unit determinations, it is a relevant factor to consider.

In sum, the record evidence establishes that the quality control inspectors share a substantial community of interest with the other employees in the petitioned-for unit. Moreover, their inclusion in the production unit sought in this case is entirely consistent with decisions in a long line of Board cases. See *Bennett Industries, Inc.*, 313 N.L.R.B. 1363, 1364, (1994) (quality control employees included within P & M unit by Regional Director because they "perform a function which is an extension of and integrated with the manufacturing process and work in close proximity to undisputed unit

employees"); *Virginia Mfg. Co., Inc.*, 311 N.L.R.B. 992, 994 (1993) (quality control employee included within production and maintenance unit because he spent 20 percent of his time on the production floor and had contact with unit employees); *Hogan Mfg., Inc.*, 305 N.L.R.B. 806, 807(1991) (quality control employee included within production and maintenance unit because "quality control is a vital part of the production process"); *Blue Grass Industries, Inc.*, 287 N.L.R.B. 274, 299 (1987) (quality control employees included within production and maintenance unit because they are an "integral part of the overall manufacturing process"); *SCM Corp.*, 270 N.L.R.B. 885, 886 (1984) (quality control employee included within production and maintenance unit because he receives comparable benefits and has "regular work-related contact with other unit employees"); *Libbey Glass Division*, 211 N.L.R.B. 939, 941 (1974) (quality control employees included within production and maintenance unit because "it is clear these employees have substantial contact with production and maintenance employees in performing their inspection functions, and their duties are an integral part of the Employer's overall glass manufacturing process"); *Ambrosia Chocolate*, 202 N.L.R.B. 788, 789 (1973) (quality control employees included within production and maintenance unit because they share the same lunchroom, locker room, parking lot, holidays, and benefits, thereby creating "sufficient common interests").

In view of the foregoing, I find that the quality control inspectors share a community of interest with the other employees in the petitioned-for unit. Accordingly, they will be included in the unit.

I note that at the hearing, the Employer represented that the position of janitor was vacant at the time of the hearing but that it employed persons in that position from time to time. The parties therefore agreed, and I find, that it is appropriate to include the position in the unit description even though it was vacant at the time of the hearing.

In conclusion, I find that the stipulated unit, as modified to include the leadmen and the quality control inspectors, is an appropriate unit for collective bargaining purposes.